

FIRST APPEALS No 3510 to 3522 of 1998

MR.JUSTICE M.H.KADRI

1. Whether Reporters of Local Papers may be allowed to see the judgements? No

2. To be referred to the Reporter or not? No

3. Whether Their Lordships wish to see the fair copy
of the judgement? No

[illegible]

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?
No

EXECUTIVE ENGINEER

Versus

MANIBEN NATHABHAI

Appearance:

FIRST APPEALS NO. 3510 to 3515 of 1998

MR RC JANI for the appellant
MS MEGHA JANI for Respondent No. 1
MR HL JANI, A.G.P. for respondent no.2

FIRST APPEALS NO. 3516 to 3522 of 1998

MR RC JANI for the appellant
MS MEGHA JANI for respondent no.1
MR MR RAVAL, A.G.P. for respondent no.2

CORAM : MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE M.H.KADRI
Date of decision: 28/01/99

ORAL JUDGEMENT

(Per :Panchal,J.)

All these appeals are ordered to be admitted.
Ms. Megha Jani, learned Counsel waives service of notice on behalf of the claimant in each appeal. M/s. H.L.Jani & M.R.Raval, learned Assistant Government Pleaders waive service of notice on behalf of respondent no.2 i.e. Special Land Acquisition Officer, Narmada Unit No.1, Baroda. At the joint request of learned advocate appearing for the parties, the appeals are taken-up for final hearing today.

2. All these appeals which are filed under section 54 of the Land Acquisition Act, 1894 read with section 96 of the Code of Civil Procedure, 1908 are directed against common judgment and award dated May 1. 1997, rendered by the learned Assistant Judge, Panchmahals at Godhra in Land Acquisition Reference Cases No. 206/89 to 218/89 and, therefore, we propose to dispose of all these appeals by this common award.

3. A proposal to acquire agricultural lands of village Ujeti, Taluka : Halol, District : Panchmahals for the purpose of constructing main canal under Narmada Project was received by the State Government from Executive Engineer, Narmada Project, Main Canal, Division-V, Baroda. On scrutiny of the said proposal, State Government was satisfied that agricultural lands of village Ujeti were likely to be needed for the said public purpose. Therefore, notification under section 4(1) of the Land Acquisition Act, 1894 ("the Act" for short) was issued which was published in Official Gazette on May 22, 1986. The owners of the lands were thereafter served with notices under section 4 of the Act. The owners had filed objections against the proposed acquisition. After considering their objections, Special Land Acquisition Officer, Narmada Unit No.1 had forwarded his report to the State Government as contemplated by section 5A(2) of the Act. On consideration of the said report, State Government was satisfied that the lands of village Ujeti which were specified in the notification under section 4(1) of the Act were needed for public purpose of constructing main canal under Narmada Project. Under the circumstances, declaration under section 6 of

the Act was made, which was published in Official Gazette on July 4, 1987. The interested persons were thereafter served with notices under sections 9(3) and 9(4) of the Act for determination of compensation. The claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs. 825/- per Are i.e. Rs. 8.25 ps. per sq.mt. The Land Acquisition Officer on consideration of materials placed before him, offered compensation at the rate of Rs. 90/- per Are i.e. Rs. 0.90 ps per sq.mt. The claimants were dissatisfied with the offer of compensation made by the Special Land Acquisition Officer and, therefore, they made applications in writing requiring the Special Land Acquisition Officer to refer the matter to the Court for the purpose of determination of compensation. Accordingly, references were made to the District Court, Panchmahals at Godhra, which were numbered as Land Acquisition Reference Cases No. 206/89 to 218/89. In the reference applications, the claimants pleaded that their acquired lands were very fertile and quality of the lands being very rich, they were earning good income from the sale of agriculture produces and, therefore, they should be awarded compensation at the rate of Rs. 825/per Are. It was claimed in the applications that the Special land Acquisition Officer had not taken into consideration relevant factors before determining market value of the acquired lands and the claimants should be awarded higher compensation. The reference applications were contested by the appellant as well as respondent no.2 vide written statement Exh.10. In the reply, it was claimed that Special land Acquisition Officer had determined market value of the acquired lands after taking into consideration the sale instances of last five years and, therefore, offer of compensation being just, reference applications should be dismissed. It was also averred that determination of compensation by the Special Land Acquisition Officer was just as well as proper and no higher compensation should be awarded to the claimants. In view of the rival assertions made by the parties, necessary issues for determination were raised by the reference court. On behalf of the claimants, witness Dolatsinh Purshottamsinh, who was claimant in Land Acquisition Reference Case No. 210/89, was examined at Exh.16. The said witness stated in his deposition that the lands acquired were fertile as well as rich in quality and the claimants were deriving substantial income from the sale of agricultural produces. The witness claimed that the lands of village Garial and village Rameshara were similar to the lands of village Ujeti and the quality of the lands was almost same. He further deposed that the lands of village Garial

and village Rameshara were situated at a distance of 3 to 3 1/2 K.Ms. away from village Ujeti. During the course of examination, the said witness produced previous award of the Court rendered in respect of lands of village Garial at Exh.17, which indicated that Court had determined market value of the lands of village Garial at the rate of Rs.11.75 ps. per sq.mt. as on May 10, 1984, which was the date of publication of notification under section 4(1) of the Act. The witness further produced judgment of the High Court at Exh.18 which showed that the appeal filed by the State Government against award of compensation in respect of lands of village Garial was dismissed. The said witness also produced another award of the Reference Court at Exh.40, which was rendered in respect of lands of village Rameshara. That award indicated that the lands of village Rameshara were valued at Rs. 11.30 ps. per sq.mt. as on January 11, 1985, which was the date of publication of notification under section 4(1) of the Act. However, the record indicated that the State Government had preferred appeal against the award rendered in respect of lands of village Rameshara before the High Court and the High Court had reduced market value of land to Rs. 8/- per sq.mt. Neither oral, nor documentary evidence was led either by the present appellant or by respondent no.2 to substantiate the claim advanced in the written statement Exh.10. On consideration of the evidence led by the claimants, the reference court concluded that previous awards produced at Exhs. 17 & 40 were comparable as well as relevant for the purpose of determining market value of the lands acquired in the present case, and placing reliance on the judgment of the High Court, the reference court has determined market value of the lands acquired in the present case at the rate of Rs. 8/- per sq.mt. by common award, giving rise to present appeals.

4. Mr. R.C.Jani, learned Counsel for the appellant submitted that the previous awards produced at Exhs.17 & 40 were neither comparable nor relevant for the purpose of ascertaining market value of the acquired lands and, therefore, appeals should be entertained. It was pleaded that the claimants failed to establish that the acquired lands had similar fertility as that of the lands which were subject matter of previous awards and, therefore, the impugned common award deserves to be set aside. It was claimed that arm chair principle propounded by the Supreme Court while determining compensation of acquired lands was ignored by the Reference Court and, therefore, the appeals should be allowed. It was also stressed that village Ujeti is situated at a distance of 3 1/2 K.Ms. from village Garial and village Rameshara and, therefore,

the awards rendered by the Reference Court in respect of the lands of those villages should not have been made basis for ascertaining market value of the acquired lands.

5. Ms. Megha Jani, learned Counsel for the claimants pleaded that though sufficient opportunity to adduce evidence was given to the appellant, no oral or documentary evidence was led by the appellant to enable the reference court to determine market value of the acquired lands and, therefore, the appeals should be dismissed. It was claimed that the witness examined on behalf of the claimants satisfactorily established that the fertility of the lands acquired in the present case was same as that of lands of village Garial as well as village Rameshara and, therefore, it cannot be said that any error is committed by the Reference Court in placing reliance on the awards in respect of lands of villages Garial and Rameshara while ascertaining market value of the lands acquired in this case. The learned Counsel for the claimants emphasised that a just award determining compensation has been passed by the reference court and the appeals filed by the acquiring body should be dismissed. It was also stressed that the reference court was not justified in giving direction to deduct 5% government share from the awarded amount in case of new tenure lands and, therefore, the said direction should be set aside. The learned Government Counsel adopted the arguments advanced by the learned Counsel for the appellant and submitted that the award of the reference court, which is not based on cogent and reliable evidence, should be set aside.

6. We have been taken through the relevant evidence by the learned Counsel appearing for the parties. In our view, there is not substance in any of the contentions urged on behalf of the appellant and the impugned award does not deserve to be set aside. On behalf of the claimants, witness Dolatsinh Parshotmbhai was examined at Exh.16. He was one of the claimants and at his instance, Land Acquisition Reference Case No. 210/89 was registered in the Reference Court. The witness in his deposition specifically pleaded that the lands which were acquired were very rich in quality and the claimants were earning substantial income from the sale of agricultural produces. It was claimed by the said witness that the lands of village Garial and lands of village Rameshara were similar to the lands of village Ujeti and their quality was almost same. This statement made on oath by the witness for the claimants was never controverted either by the present appellant or respondent no.2. The

witness produced previous award of the Court at Exh.17 in respect of lands of village Garial. Therein notification under section 4(1) of the Act was published on May 10, 1984. The lands were acquired for the Project of Dev Canal Irrigation Scheme and the reference court had determined market value of the lands acquired at the rate of Rs. 11.75 ps. per sq.mt. It is relevant to notice that Exh.18 which is judgment of the High Court indicates that the appeal filed by the State Government against the said award was dismissed and the award was upheld by the High Court. Witness Dolatsinh Purshottambhai further produced another previous award at Exh.40, which was made in respect of lands of village Rameshara. Therein, notification under section 4 of the Act was published on January 11, 1985 and the lands were acquired for construction of main canal of Narmada Project. The reference court had determined market value of the lands of village Rameshara at the rate of Rs. 11.30 ps per sq.mt., but, High Court in appeal had reduced compensation to Rs. 8/- per sq.mt. It is well settled that the previous award of reference court in respect of similar or adjacent lands and which has become final can be relied on for the purpose of ascertaining market value of the lands acquired subsequently from another village and reasonable rise in price of lands can also be considered, if there is gap of time between issuance of notification under section 4(1) of the Act. It is true that lands of village Garial as well as lands of village Rameshara are situated at a distance of 3 to 3 1/2 K.Ms. away from village Ujeti. However, in spite of opportunity having been afforded, no evidence was led either by the appellant or by respondent no.2 to establish that the acquired lands were less fertile than the lands of village Garial or lands of village Rameshara. It was not brought to the notice of the Court that acquired lands had certain disadvantages which were not noticed in the lands of village Garial or village Rameshara. Though the award rendered by the reference court in respect of lands of village Garial was confirmed by the High Court, the reference court in the present case did not rely upon the same and has awarded compensation at the rate of Rs. 8/per sq.mt. on the basis of judgment of High Court which was rendered in respect of lands of village Rameshara. On overall view of the matter, it cannot be said that the amount of compensation awarded is excessive in any manner so as to warrant interference of the Court in the present appeals. The appeals filed by the appellant are, therefore, liable to be dismissed.

7. So far as direction given by the Reference Court to deduct 5% government share from the awarded amount, in so far as new tenure lands is concerned, we notice that

the said direction is contrary to the principle laid down by the Supreme Court in the case of State of Maharashtra v. Babu Govind Gavate, A.I.R. 1996 S.C. 904. Therefore, the said direction cannot be upheld and is liable to be set aside.

For the foregoing reasons, all the appeals fail and are dismissed, with no order as to costs. The direction given by the Reference Court to deduct 5% government share from the awarded amount in the case of new tenure lands, is herein set aside and quashed. The office is directed to draw decree in terms of this judgment.

(patel)